

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PLANNED PARENTHOOD OF THE GREAT  
NORTHWEST AND THE HAWAIIAN  
ISLANDS, INC.,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity as  
Secretary of the United States Department of  
Health and Human Services; and UNITED  
STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Defendants.

No. 2:18-cv-01627-JCC

~~[PROPOSED]~~ TEMPORARY  
RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION

Plaintiff Planned Parenthood of the Great Northwest and Hawaiian Islands ("PPGNHI" or "Plaintiff") has moved for an order temporarily restraining and/or preliminarily enjoining Defendants U.S. Department of Health and Human Services and Secretary Alex M. Azar II ("HHS" or "Defendants"), their employees, agents and successors, and all others acting in concert or participating with it, from publicly disclosing PPGNHI's most recent and successful competitive application for Title X funds (the "Confidential Records"). The Court, having

[PROPOSED] TEMPORARY RESTRAINING  
ORDER - 1

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90002 00109 hk08ec53kv

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1 considered the pleadings, legal authority, and argument presented in support of Plaintiff's  
2 Motion, as well as the declarations submitted with that Motion, has found and concluded, for the  
3 specific reasons required under Federal Rule of Civil Procedure 65, that Plaintiff has shown (1) a  
4 likelihood of success on the merits, (2) that it will suffer irreparable harm if a temporary  
5 restraining order is not issued, and (3) that the balance of harms and the public interest weigh in  
6 favor of granting the temporary restraining order.  
7

8 Specifically, the Court finds that Plaintiff has established a substantial likelihood of  
9 success on the merits of its claim that Defendants' decision to proactively disclose the  
10 Confidential Records violates the Administrative Procedure Act both because the decision is  
11 arbitrary and capricious and because it is contrary to law. An agency action is "arbitrary and  
12 capricious" when:  
13

14 [T]he agency has relied on factors which Congress has not intended it to consider,  
15 entirely failed to consider an important aspect of the problem, offered an  
16 explanation for its decision that runs counter to the evidence before the agency, or  
is so implausible that it could not be ascribed to a difference in view or the  
product of agency expertise.

17 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43  
18 (1983). Here, HHS' decision is arbitrary and capricious because the agency failed to offer a  
19 reasoned explanation for its decision and failed to consider PPGNHI's arguments that the  
20 Confidential Records should not be disclosed. The decision is contrary to law because releasing  
21 the Confidential Records would violate Exemption Four of FOIA and the Trade Secrets Act. 18  
22 U.S.C. § 1905; *see Pac. Architects & Engineers Inc. v. U.S. Dep't of State*, 906 F.2d 1345, 1347  
23 (9th Cir. 1990) (observing that FOIA Exemption Four and the Trade Secrets Act are coextensive  
24 and bar release of qualifying material and the "agency does not have discretion to release it"  
25 under FOIA).  
26  
27

[PROPOSED] TEMPORARY RESTRAINING  
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1 In addition, on November 9, 2018, in the absence of a temporary restraining order,  
2 PPGNHI, along with its patients, will suffer immediate and irreparable injury. Disclosure would  
3 immediately and irreparably injure PPGNHI because no relief could remediate its competitors  
4 from obtaining the Confidential Records and using the information to compete against PPGNHI  
5 for Title X funds or other grants in Hawaii and elsewhere, including the other states in which  
6 PPGNHI competes for Title X grants. Loss of funding, as a result, would harm PPGNHI's  
7 patients, who rely on PPGNHI for essential health care.  
8

9 While PPGNHI and its patients will suffer serious, irreparable injury in the absence of  
10 relief, Defendants will suffer no injury at all from the preservation of the status quo while the  
11 litigation proceeds. Finally, the public interest weighs in favor of granting a temporary  
12 restraining order and/or preliminary injunction because the public interest favors applying  
13 federal law correctly. *See Small v. Avanti Health Systems, LLC*, 661 F.3d 1180, 1197 (9th Cir.  
14 2011). Furthermore, because FOIA bars public disclosure here, there is no FOIA public interest  
15 in disclosure of the Confidential Records.  
16

17 THEREFORE, it is hereby ORDERED that the motion is GRANTED and Defendants  
18 and their officers, agents, servants, employees, and attorneys, and those persons in active concert  
19 or participation with them, are TEMPORARILY RESTRAINED and/or PRELIMINARILY  
20 ENJOINED from publicly disclosing PPGNHI's most recent and successful competitive  
21 application for Title X funds.  
22

23 This Temporary Restraining Order shall expire on Nov 16, 2018, at 9:00 .m.,  
24 unless extended by the parties and the Court.

25 Plaintiff shall not be required to post bond.  
26  
27

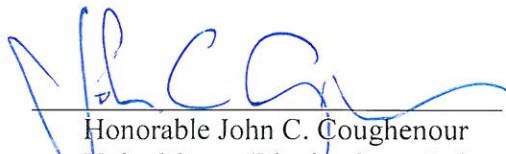
[PROPOSED] TEMPORARY RESTRAINING  
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1 IT IS SO ORDERED.

2  
3 DATED 11/8/18 (A)

4   
Honorable John C. Coughenour  
United States District Court Judge

5 Presented by:

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26  
27 [PROPOSED] TEMPORARY RESTRAINING  
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